



Senate Bill No. 665

Public Act No. 08-36

**AN ACT CONCERNING CONTINUING CARE FACILITIES AND
CONTINUING CARE AT HOME.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 17b-520 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

As used in sections 17b-520 to 17b-535, inclusive, as amended by this act:

(a) "Continuing-care contract" means an agreement pursuant to which a provider undertakes to furnish to a person not related by consanguinity or affinity to the provider, care and shelter in a facility or care at home with the right to future access to care and shelter in such facility and medical or nursing services or other health-related benefits for the life of a person or for a period in excess of one year, and which requires a present or future transfer of assets or an entrance fee in addition to or instead of periodic charges, and the amount of the assets required to be transferred or the entrance fee is equal to or in excess of the amount set by the commissioner in regulations adopted pursuant to section 17b-533;

(b) "Entrance fee" means the total of any initial or deferred transfer to, or for the benefit of, a provider of a sum of money or other property

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made or promised to be made as full or partial consideration for acceptance or maintenance of a person as a resident pursuant to a continuing-care contract;

(c) "Facility" means the place in which a provider undertakes to furnish shelter [or] and care to a person pursuant to a continuing-care contract;

(d) "Provider" means any person, corporation, limited liability company, business trust, trust, partnership, unincorporated association or other legal entity, or any combination of such entities, undertaking to furnish care and shelter in a facility or care at home with the right to future access to care and shelter in such facility and medical or nursing services or other health-related benefits pursuant to a continuing-care contract;

(e) "Resident" means any person entitled to receive present or future shelter, care and medical or nursing services or other health-related benefits pursuant to a continuing-care contract, provided nothing in sections 17b-520 to 17b-535, inclusive, as amended by this act, shall affect rights otherwise afforded to residents while they are patients in healthcare facilities as defined in subsections (a), (b) and (c) of section 19a-490 of the 2008 supplement to the general statutes;

(f) "Affiliate of a provider" means any person, corporation, limited liability company, business trust, trust, partnership, unincorporated association or other legal entity directly or indirectly controlling, controlled by or in common control with a provider;

(g) "Offer" means an offer through either personal, telephone or mail contact or other communication directed to or received by a person at a location within this state as an inducement, solicitation or attempt to encourage a person to enter into a continuing-care contract and shall include any paid advertisement published or broadcast

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within this state, except for advertisements in periodicals where more than two-thirds of the circulation is outside this state but shall not include marketing or feasibility studies;

(h) "Shelter" means a room, apartment, cottage or other living area in a facility set aside for the exclusive use of one or more persons pursuant to a continuing-care contract;

(i) "Medical or nursing services or other health-related benefits" means services or benefits which shall include care in a nursing facility, priority admission to a nursing facility, home health care or assistance with activities of daily living, to which a resident becomes contractually entitled;

(j) "Department" means the Department of Social Services;

(k) "Commissioner" means the Commissioner of Social Services.

Sec. 2. Section 17b-522 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) Before the execution of a contract to provide continuing care, or before the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever shall occur first, the provider shall deliver to the person with whom the contract is to be entered into, or to that person's legal representative, a conspicuous statement notifying the prospective resident that:

(1) A continuing-care contract is a financial investment and his investment may be at risk;

(2) The provider's ability to meet its contractual obligations under such contract depends on its financial performance;

(3) He is advised to consult an attorney or other professional experienced in matters relating to investments in continuing-care

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facilities before he signs a contract for continuing care; and

(4) The department does not guarantee the security of his investment.

(b) Before the execution of a contract to provide continuing care, or before the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever shall occur first, the provider shall deliver to the person with whom the contract is to be entered into, or to that person's legal representative, a disclosure statement. The text of the disclosure statement shall contain, to the extent not clearly and completely set forth in the contract for continuing care attached as an exhibit thereto, at least the following information:

(1) The name and business address of the provider and a statement of whether the provider is a partnership, corporation or other legal entity;

(2) The names of the officers, directors, trustees, or managing and general partners of the provider, the names of persons having a five per cent or greater ownership interest in the provider, and a description of each such person's occupation with the provider;

(3) A description of the business experience of the provider and of the manager of the facility if the facility will be managed on a day-to-day basis by an organization other than the provider, in the administration of continuing-care contracts as defined in section 17b-520, as amended by this act, or in the administration of similar contractual arrangements;

(4) A description of any matter in which the provider, any of the persons described in subdivision (2) of this subsection, or the manager has been convicted of a felony or pleaded nolo contendere to a felony charge, or held liable or enjoined in a civil action by final judgment, if

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the felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property; or is subject to a currently effective injunction or restrictive or remedial order of a court of record, within the past five years has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, rising out of or relating to business activity or health care, including but not limited to actions affecting the operation of a foster care facility, nursing home, retirement home, residential care home, or any facility subject to sections 17b-520 to 17b-535, inclusive, as amended by this act, or a similar statute in another state or country;

(5) A statement as to whether or not the provider is, or is affiliated with, a religious, charitable, nonprofit, or for-profit organization; the extent of the affiliation, if any; the extent to which the affiliate organization will be responsible for the financial and contractual obligations of the provider; and the provision of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax;

(6) The location and a description of the physical property or properties of the provider, existing or proposed; and, if proposed, the estimated completion date or dates, whether or not construction has begun, and the contingencies subject to which construction may be deferred;

(7) The goods and services provided or proposed to be provided without additional charge under the contract for continuing care including the extent to which medical or nursing care or other health-related benefits are furnished;

(8) The disposition of interest earned on entrance fees or other deposits held in escrow;

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(9) A description of the conditions under which the continuing-care contract may be terminated, whether before or after occupancy, by the provider or by the resident. In the case of termination by the provider, a description of the manner and procedures by which a decision to terminate is reached by the provider, including grounds for termination, the participation of a resident's council or other group, if any, in reaching such a decision, and any grievance, appeal or other similar procedures available to a resident whose contract has been terminated by the provider;

(10) A statement setting forth the rights of a surviving spouse who is a resident of the facility and the effect of the continuing-care contract on the rights of a surviving spouse who is not a resident of the facility, in the event of the death of a resident, subject to any limitations imposed upon such rights by statute or common law principles;

(11) A statement of the effect of a resident's marriage or remarriage while in the facility on the terms of his continuing-care contract;

(12) [A] Subject to the provisions of subsection (g) of this section, a statement of the provider's policy regarding disposition of a resident's personal property in the event of death, temporary or permanent transfer to a nursing facility, or termination of the contract by the provider;

(13) A statement that payment of an entrance fee or other transfer of assets pursuant to a continuing-care contract may have significant tax consequences and that any person considering such a payment or transfer may wish to consult a qualified advisor;

(14) The provisions that have been made or will be made by the provider for reserve funding and any other security to enable the provider to perform fully its obligations under continuing-care contracts, including but not limited to escrow accounts established in

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compliance with sections 17b-524, as amended by this act, and 17b-525 trusts, or reserve funds, together with the manner in which such funds will be invested and the names and experience of the persons making or who will make investment decisions. Disclosure shall include a summary of the information contained in the five-year financial information filed with the commissioner pursuant to section 17b-527; said summary shall set forth by year any anticipated excess of future liabilities over future revenues and shall describe the manner in which the provider plans to meet such liabilities;

(15) Audited and certified financial statements of the provider, including (A) a balance sheet as of the end of the most recent fiscal year and (B) income statements for the three most recent fiscal years of the provider or such shorter period of time as the provider shall have been in existence;

(16) [If] Subject to the provisions of subsection (g) of this section, if the operation of the facility has not yet commenced, or if the construction of the facility is to be completed in stages, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility or each stage of the facility, including:

(A) An estimate of such costs as financing expense, legal expense, land costs, marketing costs, and other similar costs which the provider expects to incur or become obligated for prior to the commencement of operations of each stage of the facility;

(B) A description of any mortgage loan or any other financing intended to be used for the financing of the facility or each stage of the facility, including the anticipated terms and costs of such financing;

(C) An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of each

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stage of the facility; and

(D) An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under continuing-care contracts;

(17) Pro forma annual income statements for the facility for the next five fiscal years;

(18) A description of all entrance fees and periodic charges, if any, required of residents and a record of past increases in such fees and charges during the previous seven years;

(19) For each facility operated by the provider, the total actuarial present value of prepaid healthcare obligations assumed by the provider under continuing-care contracts as calculated on an actuarially sound basis using reasonable assumptions for mortality and morbidity;

(20) A statement that all materials required to be filed with the department are on file, a brief description of such materials, and the address of the department at which such materials may be reviewed;

(21) The cover page of the disclosure statement shall state, in a prominent location and type face, the date of the disclosure statement and that registration does not constitute approval, recommendation, or endorsement by the department or state, nor does such registration evidence the accuracy or completeness of the information set out in the disclosure statement;

(22) If the construction of the facility is to be completed in stages, a statement as to whether all services will be provided at the completion of each stage and, if not, the services that will not be provided listed in bold print.

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(c) (1) Not more than sixty nor less than ten days before the execution of a contract to provide continuing care, the provider shall deliver a current disclosure statement to the person with whom the contract is to be entered into or to that person's legal representative.

(2) Not more than sixty nor less than ten days before a person occupies a continuing care facility, the provider shall deliver a revised and up-to-date disclosure statement to the prospective resident or to that person's legal representative, except that if there have been no revisions to the disclosure statement previously delivered pursuant to subdivision (1) of this subsection, the provider shall deliver a statement to the prospective resident or representative that there have been no revisions to the original disclosure statement.

(d) The statement required under subsections (a) and (b) of this section shall be signed and dated by the prospective resident before the execution of a contract to provide continuing care or before the transfer of any money or other property to a provider by or on behalf of the prospective resident. Each such statement shall contain an acknowledgment that such statement and the continuing-care contract have been reviewed by the prospective resident or his legal representative. Such signed statements shall be kept on file by the provider for a period of not less than the term of the contract.

(e) Each statement required under subsections (a) and (b) of this section and the continuing-care contract shall be in language easily readable and understandable in accordance with the provisions of subsections (a) and (b) of section 42-152.

(f) A copy of the standard form or forms of the continuing-care contract used by the provider shall be attached as an exhibit to each disclosure statement.

(g) The provisions of subdivisions (12) and (16) of subsection (b) of

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this section shall not apply to a continuing-care contract for the provision of care in a person's home.

[(g)] (h) The commissioner may adopt regulations in accordance with the provisions of chapter 54 to specify any additional information required in the disclosure statement.

Sec. 3. Section 17b-523 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) Each continuing-care contract shall provide:

(1) That the party contracting with the provider may rescind the contract by notifying the provider in writing by registered or certified mail of such rescission within thirty days following the execution of the contract; that in the event of such rescission, any money or property transferred to the provider shall be refunded, less (A) those costs specifically incurred by the provider or facility at the request of the resident and described in the contract or in an addendum thereto signed by the resident; and (B) a reasonable service charge, not to exceed the greater of one thousand dollars or two per cent of the entrance fees; and, if applicable, that the resident to whom the contract pertains shall not be required to move into the facility before the expiration of the thirty-day period;

(2) That if, after the thirty-day period, a resident dies before occupying a contracted-for living unit, or on account of illness, injury or incapacity is precluded from occupying a contracted-for living unit under the terms of the continuing-care contract, or a resident dies before the commencement of care under a continuing-care contract to provide care in such person's home, upon notice to the provider by registered or certified mail, the contract is automatically cancelled and the resident or the resident's legal representative shall receive a refund of all money or property transferred to the provider, less (A) those

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costs specifically incurred by the provider or facility at the request of the resident and described in the contract or in an addendum thereto signed by the resident; (B) a reasonable service charge not to exceed the greater of one thousand dollars, or two per cent of the entrance fee, and (C) if the contract includes occupying a living unit in a facility and the unit was actually available for occupancy, the usual monthly charge for that unit, prorated on a per diem basis, for the period beginning seven days after the execution of the contract and ending on the last day of the month in which the provider receives notice that the resident will not occupy the unit;

(3) That if construction of the facility has not yet begun, construction will not begin until a minimum number of living units, which shall not be less than one-half of the units in the facility or if the construction is to be completed in stages, one-half of the units evidencing financial feasibility in accordance with section 17b-526, have been presold, and a minimum deposit of five per cent of the entrance fee per unit for all presold units or ten thousand dollars per unit for all presold units, whichever is less, has been received by the provider. The requirements of this subdivision shall not apply to any continuing-care contract for the provision of care in a person's home.

(b) Each continuing-care contract shall also specify:

(1) The circumstances under which the resident will be permitted to continue to receive care and shelter [.] in a facility or care at home with the right to future access to care and shelter in such facility and medical or nursing services or other health-related benefits, and other benefits under the continuing-care contract in the event of possible financial difficulties on the part of the resident;

(2) The terms and conditions under which a contract for continuing care may be cancelled by the provider or by the resident; and the conditions, if any, under which all or any portion of the entrance fee

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will be refunded in the event of cancellation of the contract by the provider or by the resident or in the event of the death of the resident prior to or following occupancy of a living unit;

(3) The conditions under which a living unit occupied by a resident may be made available by the provider to a different or new resident other than on the death of the original resident;

(4) The manner in which the provider may adjust periodic charges or other recurring fees and the limitations of such adjustments, if any, and, if there is no such limitation, a clear statement that such increases may be made at the discretion of the provider.

Sec. 4. Section 17b-524 of the general statutes is amended by adding subsection (d) as follows (*Effective October 1, 2008*):

(NEW) (d) The provisions of this section shall not apply to any continuing-care contract for the provision of care in a person's home.

Sec. 5. Subsection (g) of section 17b-354 of the 2008 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(g) (1) A continuing care facility which guarantees life care for its residents, as defined in subsection (b) of this section, (A) shall arrange for a medical assessment to be conducted by an independent physician or an access agency approved by the Office of Policy and Management and the Department of Social Services as meeting the requirements for such agency as defined by regulations adopted pursuant to subsection (e) of section 17b-342, prior to the admission of any resident to the nursing facility and shall document such assessment in the resident's medical file and (B) may transfer or discharge a resident who has intentionally transferred assets in a sum which will render the resident unable to pay the cost of nursing facility care in accordance with the contract between the resident and the facility.

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(2) A continuing care facility which guarantees life care for its residents, as defined in subsection (b) of this section, may, for the seven-year period immediately subsequent to becoming operational, accept nonresidents directly as nursing facility patients on a contractual basis provided any such contract shall include, but not be limited to, requiring the facility (A) to document that placement of the patient in such facility is medically appropriate; (B) to apply to a potential nonresident patient the financial eligibility criteria applied to a potential resident of the facility pursuant to said subsection (b); and (C) to at least annually screen each nonresident patient to ensure the maintenance of assets, income and insurance sufficient to cover the cost of at least forty-two months of nursing facility care. A facility may transfer or discharge a nonresident patient upon the patient exhausting assets sufficient to pay the costs of his care or upon the facility determining the patient has intentionally transferred assets in a sum which will render the patient unable to pay the costs of a total of forty-two months of nursing facility care from the date of initial admission to the nursing facility. Any such transfer or discharge shall be conducted in accordance with section 19a-535. The commissioner may grant [up to a] one or more three-year [extension] extensions of the period during which a facility may accept nonresident patients, provided the facility is in compliance with the provisions of this section.

Approved May 7, 2008